IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 10388 of 1999

with

SPECIAL CIVIL APPLICATION No 9672 of 1999

with

CIVIL APPLICATION NO.14402 OF 1997
in
SPECIAL CIVIL APPLICATION No 9672 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE H.K.RATHOD

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

GUJARAT STATE FERTILIZERS COMPANY LIMITED
Versus
REGIONAL PROVIDENT FUND COMMISSIONER

Appearance:
1. Special Civil Application No. 10388 of 1999
M/S TRIVEDI & GUPTA for Petitioners No. 1-2
MR BHARAT T RAO for Respondent No. 1
MR RD DAVE for Respondent No. 2
..... for Respondents No. 3-4

2. Special Civil Application No. 9672 of 1999

MR RAJESH DAVE for Petitioners

MR BHARAT T RAO for Respondent No. 1-2

M/S TRIVEDI & GUPTA for Respondent No. 3

CORAM : MR.JUSTICE H.K.RATHOD

Date of decision: 26/02/2002

COMMON ORAL JUDGEMENT

#. So far, Special Civil Application No. 10388 of 1999 filed by Gujarat State Fertilizers Company Limited is concerned, this Court has heard Mr.K.M.Thakkar, learned advocate for M/S TRIVEDI & GUPTA for Petitioners No. 1-2, MR BHARAT T RAO, learned advocate for Respondent No. 1 and learned advocate MR RD DAVE for Respondent No. 2. In connection with Special Civil Application No.9672 of 1999 filed by employees Union of the GSFC, heard MR RAJESH DAVE, learned advocate for Petitioners, learned advocate Mr. BHARAT RAO for Respondent No.1-2, as also Mr.K.M.Thakkar learned advocate for M/S TRIVEDI & GUPTA for Respondent No.3.

Since common question of law is involved in the these two petitions, same are heard together and being disposed of by this common order. Today, Mr.K.M.Thakar, learned advocate for the petitioner Company has produced on record three letter dated 25th February, 2002, 15th February, 2002 and 21st January, 2002, which are taken on record.

#. Brief facts giving rise to these petitions are narrated as under :-

In respect of Special Civil Application No.10388/ 1999, the petitioner is a registered company engaged in manufacturer and sale of essential commodities like fertilisers etc. It is governed by provisions of Employees Provident Funds and Misc. Provisions Act. According to the petitioner, they have their own provident funds scheme and hence, are exempted from compliance of remittance of provident fund contribution to the department in view of more beneficial scheme. The petitioner company decided to take one welfare measure and to give benefits of pension. Said scheme was revised in 1987 so as to make it more beneficial and attractive and since then, employees have been receiving benefits of the said scheme. According to the petitioner company, said scheme is more beneficial than statutory scheme of respondent authorities. In the year 1995, Government

introduced new pension scheme and by virtue of Section 17 of the said scheme, an establishment can be granted exemption from the said scheme on some conditions specified therein. On 2nd December, 1995 the petitioners taking into confidence their employees, made application for exemption along with all required documents. Despite this, respondents insisted for transfer of contribution of employees PF which affected petitioners and their employees. Because of above facts and situation, respondent Union filed Special Civil Application No.146/96 wherein direction was given to make application for exemption to appropriate Government which was to be decided as expeditiously as possible. Thereafter, on 17th January, 1996 the petitioner made application and on 31st March, 1997 the respondents rejected the application stating that the scheme of petitioners is less favourable to employees. Thereafter, in the year 1997, the respondent Union filed another petition being Special Civil Application No.2977 / 97 challenging the said decision. On 6th October, 1998, said petition with other petitions came to be decided whereby the matters were remanded to the respondent authorities with certain directions to hear all concerned parties. On 1st December, 1998 the petitioners made detailed application for exemption to which respondent Union gave no objection to the exemption application. On 22nd July, 1999 respondent No.1 raised certain objections which were not true and correct and thereafter on 30th August, 1999 without giving any reasons, respondent authority informed the petitioners that existing scheme of petitioners is less beneficial than statutory scheme, without giving any opportunity to petitioners though directed by this Court. On 30th October, 1999 the respondent Union knowing this rejecting of scheme, addressed a letter making grievance that inspite of specific direction from this Court to hear them but no hearing was given. On 19th / 22nd November, 1999 respondent authority determined amount of Rs.4,28,42,793/- and directed petitioners to transfer said amount to RPFC, Vadodara. However, said impugned action was challenged by respondent Union by filing petition which is cognate matter pending before this Court. On 8th December, 1999 the respondent authority informed respondent No.4 bank to transfer the aforesaid amount in favour of respondent authority.

#. In the present petition, the petitioner company has challenged the order dated 30th August, 1999 which is at pg.165 - Annexure-D and the order dated 19th / 22nd November, 1999 at pg.167 - Annexure-F to the petition. Mr.K.M.Thakar, learned advocate appearing for petitioner Company has submitted that compliance in respect of

providing details has been made to the PF Authority and thereafter, the petitioner Company has filed another amendment application for exemption to the respondent authority but said application has also been rejected by the respondent authority on 15th December, 2001.

#. On the other hand, the grievance of the employees Union in Special Civil Application No.9672/99 is almost similar to the grievance raised by the petitioner Company in Special Civil Application No.10388 / 1999. However, learned advocate Mr.Rajesh Dave for Employees Union has submitted that Union has not been heard before rejecting exemption application by RPF Authority. Learned advocate Mr.K.M.Thakar appearing for petitioner company on instructions from the concerned officer has submitted before this Court that now exemption application has been finally rejected by the authority and there is no scope further submitting any application and therefore, the petitioner company is prepared to pay the amount demanded by the respondent authority by order dated 19th / 22nd November, 1999 and finally by order dated 15th December, 2001. It is submitted that the petitioner company is prepared to deposit said amount before RPF Authority after encashing the security whereby the amount in question has been deposited by the petitioner Company. Learned advocate Mr.Thakar has also submitted that for the purpose of encashing the security for the amount in question deposited by the petitioner Company, necessary orders from the RPF authority is necessary and for that the petitioner Company has already made approach by letter to the RPF Authority seeking permission to deposit the said amount with RPF Authority. But Mr.Thakar, learned advocate on behalf of the petitioner Company has expressed some apprehension that the respondent authority may now take action against the petitioner company in respect of interest on delayed payment and damages and the petitioner Company also apprehends some prosecution by the respondent authority. However, Mr.B.T.Rao, learned advocate for respondent authority has submitted that when application has been filed by the petitioner Company for exemption, then naturally, under the scheme, the matter remains stand still with the authority till the application is finally examined by the RPF Authority and therefore, no charge nor any penal interest can be demanded from the petitioner company. It is also submitted by Mr.B.T.Rao that in the mean time, this Court has protected the petitioner Company and therefore also, no prosecution can be lodged against the petitioner Company. Mr.B.T.Rao, learned advocate for respondent authority has also submitted that under Section 14[b] of the Act, the powers vested with the Central Government to

waive penal interest and damages but for this purpose, the petitioner Company needs to approach the authority concerned and Central Government will consider such application of the petitioner Company.

#. In light of above facts and circumstances of the case and the fact that the matter is pending since long with the authority as well as before this Court, as also submissions of Mr.B.T.Rao, learned advocate for respondent authority, now the respondent authority will not take any coersive criminal prosecution against the petitioner Company or any other responsible officer dealing with such matter because of the fact that the petitioner company is transferring the amount to the PF authority.

#. I have considered submissions made by the learned advocates for the respective parties. Now the scheme has been lastly rejected by the respondent authority on 15th December, 2001. Meanwhile, the matter has been pending for final decision before this Court as well as before the authority. Therefore, amount has been safely invested by the petitioner company before the concerned bank in different security and therefore, amount is safe. From the record, it transpires that in both these petitions, there was no stay granted by this Court but in on Civil Application moved by the Union, wherein this Court has granted stay not to transfer the amount to PF Authority. However, question is that ultimately scheme has been finally rejected by the respondent authority on 15th December, 2001 and the amount has been safely deposited in different security with Bank by the petitioner Company and now that amount along with interest accrued on the said deposit will also required to be transferred by the petitioner Company to RPF Authority and therefore, according to my opinion, question of paying penal interest and damages does not arise when normally there is no violation on the part of the petitioner Company for withholding the said amount by not paying the said amount to the RPF Authority inasmuch as the scheme was under consideration with the RPF Authority. However, for this purpose, the petitioner Company shall have to approach the Central Government under Section 14[b] of the Act for waiver of penal interest as well as damages. As and when such application will be filed by the petitioner company, it is directed the Central Government to consider such application of the petitioner Company with sympathetic approach keeping in mind the peculiar facts and circumstances of the case that the matter is pending for petty long time before the authority as also this Court.

From the record of this case, there seems no malafide intention on the part of the petitioner company to keep the amount with company and the said amount had already deposited by the petitioner Company in different security with the Bank. Therefore, all these facts require to be taken into account while considering such application of the petitioner under Section 14[b] by the Central Government. However, considering submissions of Mr.B.T. Rao having been made on instructions of concerned officer, no prosecution will be filed against the petitioner Company or any other responsible officer dealing with the matter, it is directed to the respondent authority not file any prosecution against the petitioner company or any responsible officer. It is also further directed to the petitioner to transfer the amount in question with the RPF Authority after encashing the same within four weeks from the date of encashment of such deposit which has been deposited in different security with the Bank along with accrued interest on the said deposit.

#. Lastly, Mr.Rajesh Dave, learned advocate appearing on behalf of the petitioner has submitted that during pendency of the application before the authority as well as pendency of the petition before this Court, from 1995 onwards, many persons hundred in numbers have been retired from the services of the petitioner company and their claims have not yet been decided on account of pendency of the proceedings before the authority and pendency of the petition before this Court. Considering the submission of Mr.Dave, it is directed to the RPF Authority to finalise the claim of the persons who have retired from 1991 onwards from the services of the petitioner company, pending before the authority within period of eight weeks from the date of receiving the copy of this order. It is also directed that necessary payment to each employee in respect of pensionary benefits will have to be made by the respondent authority after receiving the said amount from the petitioner Company.

In view of above observations and directions, both these petitions stand disposed of accordingly. Rule is made absolute to the extent indicated hereinabove. No order as to costs. Direct Service is permitted to all the parties.

Since this Court has passed order in present two main petitions, no order requires in Civil Application

No.14402 / 1997, hence, same stands disposed of accordingly.

Date : 26-2-2002 [H.K.Rathod, J.]

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